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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/790,466	03/01/2004	Stephen P. Dulac	PD-202097	9945

  

EXAMINER	
LOUIE, OSCAR A	

  

ART UNIT	PAPER NUMBER
2136	

  

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Hughes Electronics Corporation  
Patent Docket Administration  
Bldg. 001, M/S A109  
PO Box 956  
El Segundo, CA 90245-0956

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Advisory Action  
Before the Filing of an Appeal Brief**

Application No.

10/790,466

Applicant(s)

DULAC, STEPHEN P.

Examiner

Oscar A. Louie

Art Unit

2136

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 10 December 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: \_\_\_\_\_.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.

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1/3/08

Continuation of 11. does NOT place the application in condition for allowance because:

- The applicant's argument on page 9 regarding the Claim Objections has been carefully considered and found to be persuasive. The examiner hereby withdraws his Claim Objections requiring the applicant to include the location of support from the disclosure. The examiner notes that the applicant is not required to include but recommended to include the location of support from the disclosure in order to aid in an efficient prosecution.
- The applicant's argument on page 11 that "Szymanski does not disclose the step of delivering a first unencrypted portion of at least one video program available for viewing on demand" has been considered but found to be non-persuasive. Szymanski defines "interactive television" as including "application code or control information and an audio-video consisting a television program," therefore, it is implied/suggested that delivery of this content would have to be made and the said content is indeed video on demand. That is, "interactive television" is audio-video which is controllable through a set-top box which is suggested throughout Szymanski as being equivalent to video on demand, but not limited to video on demand. At the very least, the applicant's interpretation of "video on demand" as being a subset of "interactive television" would justify through agreement the examiner's 35 U.S.C. 103a rejection of obviousness.
- The applicant's argument on page 12 regarding "Szymanski does not disclose the step of storing the first unencrypted portion of the at least one video program as unencrypted data on a digital video recorder" has been considered but found non-persuasive. The applicant's disclosure and claim language are broad enough to interpret the storage as being any type of storage in a set-top box. The applicant's disclosure does not recite specific uses or types of memory, only that the video content is stored in a DVR. That is, the applicant's disclosure does not provide details as to the duration of storage, the types of portions that are stored, or the type of storage memory in the DVR (i.e. set-top box).
- The applicant's argument on page 13 "Szymanski does not disclose the step of offering the video program for purchase by the subscriber" has been considered but found non-persuasive. The examiner notes that the rejection made does not include inherency as it is a 35 U.S.C. 103a obviousness type rejection. Szymanski discloses an "electronic commerce application that allows the interactive television to make purchases via credit card transactions," which suggests "offering the video program for purchase by the subscriber." That is, it would have been obvious for one of ordinary skill in the art at the time of the applicant's invention to interpret "electronic commerce application that allows the interactive television to offer and allow a user to make purchases via credit card transactions," as suggesting the sales of various contents, one of which would typically be audio-video content as is reasonable to expect from a set-top box used with a television in interactive television.
- The applicant's argument on page 13 "Szymanski does not disclose the step of accepting a subscriber demand to purchase the complete video program" has been considered but found to be non-persuasive. Szymanski suggests that various content may be purchased through the use of an "electronic commerce application" in the set-top box "which allows interactive television users to make purchases via credit card transactions." This suggests that the electronic commerce application would accept purchases, which includes audio-video content since it is a set-top box with interactive television which allows interactive television users to make purchases.
- The applicant's argument on page 14 "Liao does not disclose retrieving the stored first unencrypted portion of the at least one video program after accepting a subscriber demand to purchase the complete video program" has been considered but found non-persuasive. The examiner notes that the disclosure from Liao recites similar functionality of retrieval of content from storage for playback upon purchase which can be controlled as with a set-top box. Although, Liao does not explicitly disclose retrieval from a local storage, it would be obvious to one of ordinary skill in the art as suggested by the combination of Szymanski and Liao to retrieve content from some form of storage medium, regardless whether local or remote, for playback of audio-video content.
- The applicant's argument on page 14 "Liao does not disclose switching from the stored unencrypted portion of the at least one video program to the remaining portion of the purchased video program" has been considered but found non-persuasive. The examiner notes that it would have been obvious for one of ordinary skill in the art at the time of the applicant's invention to choose playback as either batch or non-batch, as suggested by Liao.
- The applicant's argument on page 15 "Spies does not disclose authorizing capture and decryption of a remaining portion of the video program" has been considered but found non-persuasive. Spies discloses the usage of cryptographic keys associated with video content which suggests the use of encryption/decryption providing authentication for video programs. The storage and offering of programs arguments are addressed above.
- The applicant's arguments on pages 15-17 "the final office action does not suggest how Liao discloses retrieving the first unencrypted portion from storage while retrieving a remaining portion of the program on the digital video recorder nor does suggest how Szymanski discloses the claimed means for splicing" have been considered but are non-persuasive. Liao suggests retrieving content and using batch or non-batch to obtain one portion of content then the remaining portion. Szymanski suggests the splitting and reassembling of a packetized signal to reconstruction television programs by means of the set-top box. The applicant's argument on pages 17-18 regarding the DVR, storage, means for splicing are addressed above.
- The applicant's remarks "why would one of ordinary skill in the art modify Szymanski to download those interactive applications piecemeal as described in Ullrich" and "the Applicant does not understand how different programming is related to the applicant's invention or any of the cited references." The examiner notes in regard to the first remark "why would one of ordinary skill in the art modify Szymanski to download those interactive applications piecemeal as described in Ullrich" that the motivation would be one of knowledge which was available for quite some time in the art of audio-video content broadcasting. One of ordinary skill in the art would both appreciate and understand that by offsetting based on time each relative broadcast, overall efficiency is gained and better bandwidth is utilized as is suggested by Ullrich. The examiner notes in regard to the second remark above "the Applicant does not understand how different programming is related to the applicant's invention or any of the cited references" that the motivation was meant to explain to the applicant that the inclusion of the teachings from Ullrich would be for the purposes of providing different content to be available to users of a broadcast transmission. The concepts from Ullrich regarding offsetting content broadcasting based on time and providing different content to users are similar to those of the applicant's limitation "wherein the at least a portion of the program is repeatedly transmitted on one of a plurality of channels, each repeated transmission separated from a previous transmission by a predetermined period of time."